



Hagelin Spencer LLC

Buffalo ■ Rochester ■ Syracuse ■ Garden City ■ Jersey City

May 15, 2020

VIA PACER ONLY

Vernon S. Broderick, United States District Judge
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Courtroom 518
New York, NY 10007

RE: Rashawn Maurice Spencer (V) John Chung
Case No.: 120-cv-599(VSB)
Our File No.: D13179

Dear Judge Broderick:

I represent the defendant John Chung (defendant) in the above-referenced matter. On May 12, 2020 you issued an Order denying my application for discovery relief based upon non-compliance with Fed. R. Civ. P. 37(a)(1), and for not attaching the outstanding discovery documents (see, attachment “1”). I am now renewing my application.

Compliance with Fed. R. Civ. P. 37(a)(1):

The outstanding discovery consists of plaintiff’s response to the defendant’s demand for interrogatories (see, attachment “3”) and plaintiff’s response to the defendant’s demand for authorizations to obtain records for plaintiff’s prior accidents (see, attachment “4”). In addition the plaintiff has not provided their Rule 26 disclosure.

On April 1, 2020, I sent a good faith letter to plaintiff’s counsel requesting that plaintiff respond to the defendant’s outstanding discovery demands (see, attachments “6” and “8”). I did not receive a response. On April 15, 2020, my calendar clerk received an email from a representative from plaintiff counsel’s office to confirm the depositions of the plaintiff and the defendant for April 23, 2020. I responded to the representative’s email and detailed that discovery was outstanding but stated that if the discovery was received by April 17, 2020, that the depositions could still proceed (see attachment “7”). I further advised that if I did not receive the responses to the outstanding discovery by April 17, 2020, that I would have to notify this

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Court. I did not receive a response to my email and submitted an April 17, 2020 application to this Court (see, attachment "2"). Since the submission of my April 17, 2020 letter to this Court, the defendant has not received the outstanding discovery responses from the plaintiff.

Prior to renewing this application, I placed two telephone calls to plaintiff's counsel. The first telephone call was made on May 15, 2020 at 12:52 p.m. The second phone call was made on May 15, 2020 at 1:18 p.m. For each call I heard a recorded message which advised to call back during business hours. There was not an option to leave a voicemail.

Therefore, it is necessary for this Court to intervene as the defendant is unable to conduct a proper deposition of the plaintiff due to the outstanding discovery. For the foregoing reasons, it is respectfully requested that this Honorable court schedule a teleconference to resolve the outstanding discovery issues in this action or in the alternative, issue an order directing the plaintiff to respond to the defendant's outstanding discovery demands.

Respectfully submitted,

_____/s/_____
Louis T. Cornacchia III, Esq.

cc: VIA ELECTRONIC MAIL & PACER

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**APPLICATION GRANTED
SO ORDERED**

VERNON S. BRODERICK

U.S.D.J. 5/20/2020

Plaintiff is directed to serve Defendant with responses to Defendant's discovery demands within thirty (30) days. The parties shall to meet and confer and submit a proposed revised Case Management Plan and Scheduling Order within two weeks of this Order. Plaintiff's counsel is directed to file a Notice of Appearance in this action, and to engage in the discovery and meet and confer processes diligently and in good faith going forward. Failure to do so may result in dismissal of this action for failure to prosecute. Defendant's counsel is directed to serve a copy of this endorsement on Plaintiff's counsel.

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